



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

December 22, 1999

Number: **200013016**  
Release Date: 3/31/2000  
CC:DOM:FS:CORP  
TL-N-5926-99  
UILC: 1502.77-00

INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

ASSOCIATE DISTRICT COUNSEL

FROM: DEBORAH A. BUTLER  
ASSISTANT CHIEF COUNSEL (FIELD SERVICE)  
CC:DOM:FS

SUBJECT: CONSENTS (FORMS 872)

This Field Service Advice responds to your memorandum dated October 28, 1999. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND

CorpA	=
CorpAGroup	=
CorpB	=
CorpBGroup	=
CorpC	=
CorpD	=
CorpE	=
CorpF	=

IndM	=
Year1	=
Year2	=
Year3	=
Year4	=
Year5	=
Year6	=
Year7	=
Year8	=

Date1	'	=
Date2		=
Date3		=
Date4		=
Date5		=
Date6		=
Date7		=
Date8		=
Date9		=
Date10		=
Date11		=
Date12		=
Date13		=
Date14		=
Date15		=
Date16		=
Date17		=
Date18		=
Date19		=
Date20		=
Date21		=
Date22		=
Date23		=
Date24		=
Date25		=
Date26		=
Date27		=
Date28		=
Date29		=
Date30		=
Date31		=
Date32		=
Date33		=
StateA		=
AgencyB		=
#B		=
#C(CorpB)		=
#D(CorpC)		=
TextB		=
TextC		=

---



---



---

TextD =

### ISSUES

What are the proper forms for consents (Forms 872) to extend the periods of assessment for the continuing "CorpAGroup" for Year3, Year4, and Year5, and the terminated "CorpBGroup" for Year2 and Year3.

### CONCLUSIONS

We recommend that the following language be used for the consents of the "CorpAGroup" and the "CorpBGroup" for the years stated above.

#### **"CorpAGroup"**

##### **Consent A:**

**Title Line:** CorpC\*

\*with regard to the consolidated tax liability of CorpA and Affiliates consolidated group for tax years Year3, Year4, and Year5.

**Signature Line:** CorpC

(Signature by authorized officer of the company)

##### **Consent B:**

**Title Line:** The CorpF, as successor to CorpA and as agent for CorpA and Affiliates.

**Signature Line:** CorpF

(Signature by authorized officer of the company)

---

#### **"CorpBGroup"**

##### **Consent C:**

**Title Line:** CorpC, parent of CorpF, successor by merger to CorpB and Affiliates.

**Signature Line:** CorpC

(Signed by authorized officer of the company)

**Consent D:**

**Title Line:** CorpF, as successor by merger to CorpB and as agent for CorpB and Affiliates

**Signature Line:** CorpF  
(Signature by authorized officer)

All four of the above consents are needed. We understand that "Consent C" was obtained Date27 (which is listed in our table below as consent number 10).

**FACTS**

CorpA and Affiliates (the "CorpAGroup") filed consolidated Federal income tax returns for at least calendar years Year1 through Year5, reporting consolidated tax liabilities, all of which are being contested by the Service. CorpB, a StateA corporation, ("CorpB") and Affiliates (the " CorpBGroup") filed consolidated returns for at least Year2 and Year3, reporting consolidated tax liabilities, all of which are being contested by the Service. The audit of the CorpBGroup commenced Date1, and the thirty day letter for Year2 and Year3 was issued on Date8. The case is currently pending before Appeals.

**The Plan and Business Combination (Year6).**

On Date5, the AgencyB approved and authorized CorpA's acquisition of control of CorpB and the business combination by which CorpA and CorpB became subsidiaries of CorpC, a StateA corporation incorporated Date3, the resulting common control of CorpD and CorpE by CorpC, the consolidation of CorpD and CorpE operations, and the merger of CorpD and CorpE by CorpC.

CorpA and CorpB became wholly owned subsidiaries of CorpC on Date7, (as a result of downstream mergers of transitory merger subsidiaries of CorpC merging with and into each of them). The former shareholders of CorpA acquired control (more than 50 percent) of the outstanding common stock of CorpC as a result of the business combination, which we assume constituted a reverse acquisition. (The business combination had the same economic effect on the stockholders of CorpB and CorpA as would a direct merger of CorpA and CorpB. 1995 CorpC10K, Part I,p.1) In other words, on that date all of the CorpA and CorpB shares were converted into shares of CorpC (at different conversion ratios). The taxpayers treated the CorpAGroup as if it continued to exist and the CorpBGroup as having terminated, Date7. Treas Reg. § 1.1502-75 (d) (3). This Plan and Business Combination was set forth in an Agreement and Plan of Merger dated as of Date2,

as amended (the “Agreement”). Pursuant to Amendment No. #B, of the Agreement (dated as of Date6), CorpC became a party, contractually assumed all of the

obligations of CorpA, in its capacity as “TextB”. Significantly, it represented and warranted that it “TextC” (Underscoring added). CorpC in an apparent exercise of its corporate powers under the Agreement to carry on the businesses of CorpA and CorpB , executed consents to extend the period of assessment (under section 6501 (a)).

#### The First And Second Mergers (Year7).

On Date11, CorpA merged with and into CorpB, in a reorganization under section 368 (a) (1) (D) (as they were commonly controlled by CorpC). The next day, CorpB’s wholly owned railroad subsidiary, CorpE, merged with and into CorpD, and the surviving railroad changed its name to CorpF, a StateA corporation.

#### The Third Merger (Year8).

CorpB subsequently merged downstream with and into (its wholly owned subsidiary) **CorpF** on Date17, which transferred by operation of law, all of the disappearing corporation’s assets and liabilities to the survivor, including the entire consolidated Federal income tax liability for each year which it was a member (and \ or the common parent) of the CorpBGroup. Likewise, it had the legal effect of transferring CorpA’s liability for the consolidated income tax of the CorpAGroup for those years which CorpA was a member and \ or the common parent. Treas. Reg. § 1.1502-6 (a). In addition, the merger under StateA General Corporate Law *vested* ...TextD. (Underscoring added)

Consents (Forms 872) were executed as set forth in the table below. **Consents numbered 1, 3, 5, 7, 9 and 10 in bold type relate to the terminated CorpBGroup.** Each of them contained the EIN of CorpB (#C). The other consents relate to the continuing CorpAGroup. Each of them contained the EIN of CorpC (#D).

<u>Consents' Title</u>	<u>Date Signed By IRS</u>	<u>Years Extended</u>	<u>Exp'n Date</u>	<u>Executed For</u>
<b>1.CorpC as successor in interest to CorpB &amp; Affiliates</b>	<b>Date9</b>	<b>Year3</b>	<b>Date14</b>	Same as Title
2.CorpC & Affiliates (Formerly: CorpA & Affiliates)	Date10	Year3	Date16	Same as Title
<b>3.Same as 1.</b>	<b>Date12</b>	<b>Year3</b>	<b>Date16</b>	Same as Title
4.CorpB Successor by merger to CorpA & Affiliates	Date13	Year3 & Year4	Date19	CorpB & CorpC
<b>5.Same as 1.</b>	<b><u>Date15</u><sup>1</sup></b>	<b>Year2 &amp; Year3</b>	<b>Date22</b>	Same as Title
6.CorpB Successor by merger to CorpA & Affiliates	Date18	Year3, Year4 & Year5	Date24	CorpB & CorpC
<b>7.Same as 1.</b>	<b>Date20</b>	<b>Year2 &amp; Year3</b>	<b>Date26</b>	Same as Title
8.CorpB Successor by merger to CorpA & Affiliates	Date21	Year3, Year4 & Year5	Date31	CorpB & CorpC
<b>9.Same as 1.</b>	<b>Date25</b>	<b>Year2 &amp; Year3</b>	<b>Date31</b>	Same as Title
<b>10.CorpC, parent of CorpF, Successor by merger to SFP &amp; Affiliates</b>	<b>Date27</b>	<b>Year2 &amp; Year3</b>	<b>Date32</b>	Same as Title

---

<sup>1</sup>The last consent dated before the downstream merger of CorpB with and into CorpF, which occurred Date17.

#### ADDITIONAL CONSENTS

We understand (based upon a facsimile dated Date30) that new consents were executed by the Service on Date29 as follows for the CorpAGroup.

CorpC, parent of the CorpF Company, Successor by merger to CorpB, Successor by merger to CorpA, & Affiliates.

This consent was signed in the corporate names of CorpC and CorpF Company (on Date28), and extended the periods of assessment through Date33.

#### CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]


[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



If you have any further questions or comments, please call (202) 622-7930.

DEBORAH A. BUTLER  
ASSISTANT CHIEF COUNSEL  
(FIELD SERVICE)

By: \_\_\_\_\_  
ARTURO ESTRADA  
Acting Chief Corporate Branch